

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Campos	Team: Squad #16	CCRB Case #: 201610287	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 12/10/2016 1:50 AM	Location of Incident: Livonia Avenue and Barbey Street	Precinct: 75	18 Mo. SOL 6/10/2018	EO SOL 6/10/2018	
Date/Time CV Reported Tue, 12/13/2016 12:30 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/13/2016 12:30 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SSA Robert Martinez	01369	922716	075 PCT
2. POM David Quattrocchi	15010	952133	075 DET
3. POM William Schumacher	04618	949640	075 PCT
4. An officer			075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. Officers			075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SSA Robert Martinez	Abuse: Sergeant Robert Martinez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM David Quattrocchi	Abuse: Police Officer David Quattrocchi stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM William Schumacher	Abuse: Police Officer William Schumacher stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.SSA Robert Martinez	Abuse: Sergeant Robert Martinez frisked § 87(2)(b)	
E.SSA Robert Martinez	Discourtesy: Sergeant Robert Martinez spoke discourteously to § 87(2)(b)	
F.SSA Robert Martinez	Force: Sergeant Robert Martinez used physical force against § 87(2)(b)	
G.POM David Quattrocchi	Abuse: Police Officer David Quattrocchi frisked § 87(2)(b) t § 87(2)(b)	
H.SSA Robert Martinez	Abuse: Sergeant Robert Martinez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
I.POM David Quattrocchi	Abuse: Police Officer David Quattrocchi searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
J.SSA Robert Martinez	Abuse: Sergeant Robert Martinez interfered with § 87(2)(b)'s use of a recording device.	
K. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
L. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	

Case Summary

On December 13, 2016, § 87(2)(b) filed his complaint via telephone on behalf of himself and another individual identified by the investigation as § 87(2)(b)

At approximately 1:50 AM on December 10, 2016, § 87(2)(b) was driving his vehicle with § 87(2)(b) as a passenger, when his vehicle was stopped by Sergeant Robert Martinez, Police Officer David Quattrocchi, and Police Officer William Schumacher, of the 75th Precinct at Livonia Avenue and Barbey Street in Brooklyn (**Allegation A, B, and C**). § 87(2)(b) then began recording the incident with his cellular phone, which he placed into the cup holder of his vehicle. Sgt. Martinez told § 87(2)(b) that he was pulled over for speeding and disobeying stop signs, after which he was asked to step out of his vehicle. Sgt. Martinez frisked § 87(2)(b) (**Allegation D**), and asked him to step to the back of his vehicle. § 87(2)(b) asked why he was being sent to the back of his vehicle, and Sgt. Martinez told him to, “Stop fucking around,” (**Allegation E**). Sgt. Martinez placed his hands on § 87(2)(b)'s back and arm and slammed him onto his vehicle (**Allegation F**). PO Quattrocchi asked § 87(2)(b) to exit the vehicle, and PO Quattrocchi frisked § 87(2)(b) (**Allegation G**). § 87(2)(b) and § 87(2)(b) were sent to the back of their vehicle. Sgt. Martinez then entered the front driver's side door, and searched the vehicle (**Allegation H**). It was alleged that PO Quattrocchi also searched § 87(2)(b)'s vehicle (**Allegation I**). As Sgt. Martinez searched the vehicle, he turned § 87(2)(b)'s cellular phone upside down to obscure the view of the camera (**Allegation J**). Sgt. Martinez removed a small empty plastic bag from § 87(2)(b)'s vehicle, asked § 87(2)(b) what it was, and stated that it looked like a bag for narcotics. An unidentified officer stated to § 87(2)(b) “What’s your address?” before pausing and stating, “Fuck,” (**Allegation K**). Later, Sgt. Martinez asked § 87(2)(b) for his information. § 87(2)(b) did not want to give officers his information, and an officer stated, “In a minute you’re going to be in handcuffs if you don’t tell your name and date of birth” (**Allegation L**). § 87(2)(b) was given his ID back, and asked to drive more carefully. The officers left without issuing a summons or making an arrest. At some point during the incident, another group of Anti-Crime officer appeared on the scene. They did not interact with § 87(2)(b) or § 87(2)(b)

This case has video evidence, SnagIt copies of video 201610287_20161221_1707_DM.mp4. have been placed below. Please note that the full video can be found at Board Review 01 and the transcription of this video can be found at Board Review 02. The following clips can be found at Board Review 03, Board Review 04, Board Review 05, Board Review 06, and Board Review 07.



201610287_20170706_1631_DM.mp4



201610287_20170706_1604_DM.mp4



201610287_20170706_1610_DM.mp4



201610287_20170706_1619_DM.mp4



201610287_20170706_1615_DM.mp4

This case is 209 days old. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) accepted mediation during his sworn statement. However, difficulty identifying officers and attributing allegations to unidentified officers made the case ineligible for mediation (Board Review 08).
- On April 20, 2017, a FOIL request was submitted to the Comptroller's Office for any Notice of Claim filed by or on behalf of § 87(2)(b). The request was returned with negative results (Board Review 09).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [REDACTED]
- [REDACTED]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s ninth out of nine CCRB complaints (Board Review 13).

○ § 87(2)(b)

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- This is § 87(2)(b) [REDACTED]'s first case with the CCRB (Board Review 14).
- Sgt. Martinez has been a member of service for 18 years. There are 98 prior allegations against Sgt. Martinez, stemming from 35 complaints; 12 prior allegations were substantiated. There are two prior vehicle stop allegations pled against Sgt. Martinez; one allegation was exonerated. There are four prior frisk allegations against Sgt. Martinez, two of which were substantiated. There are 13 prior discourteous word allegations, two of which were substantiated, one was exonerated, and two were unfounded. There are 12 previous force allegations, two of which were substantiated, and two were exonerated.
 - In CCRB case 200205713, a discourteous word allegation was substantiated. The Board recommended Command Discipline A; the NYPD disposition was Command Discipline A.
 - In CCRB case 200704280, a physical force allegation and a threat of force allegation were substantiated. The NYPD disposition was no disciplinary action was taken because the department was unable to prosecute.
 - In CCRB case 201101407, a stop allegation and a frisk allegation were substantiated. The Board Recommended Instructions; the NYPD Dispositions were Instructions.
 - In CCRB case 201310387, a physical force allegation was substantiated. The Board recommended Charges. The case was prosecuted by the Administrative Prosecution Unit, and the NYPD disposition was a Forfeit of 10 vacation days.
 - CCRB case 201505300 is open and awaiting Board review. Two allegations of physical force, a threat of force allegation, and a discourteous word allegation are pleaded against Sgt. Martinez.
 - In CCRB case 201508658, a discourteous word and a discourteous language allegation were substantiated. The Board recommended Command Discipline B; the NYPD disposition is currently pending.
 - In CCRB case 201510169, a stop allegation, a frisk allegation, and a search allegation were substantiated. The Board recommended Command Discipline B; the NYPD disposition is currently pending.

- In CCRB case 201606105, a detainment allegation was substantiated. The Board recommended Command Discipline B; the NYPD disposition is currently pending.
- PO Quattrocchi has been a member of service for five years. There are five prior allegations against PO Quattrocchi stemming from three complaints. None of the prior allegations were substantiated. There is one prior vehicle stop allegation against PO Quattrocchi, which was exonerated.
- PO Schumacher has been a member of service for six years. There are 30 prior allegations against PO Schumacher stemming from 11 complaints; three prior allegations were substantiated.
 - In CCRB case 201204235, a premises entered and a physical force allegation were substantiated. The Board recommended Charges. The case was prosecuted by the APU and the NYPD disposition for the force was a forfeit of 10 vacation days; the NYPD disposition for the entrance was not guilty.
 - In CCRB case 201506191 a discourteous word allegation was substantiated. The Board Recommended Command Level Instructions; the NYPD disposition was no penalty.

Potential Issues

- § 87(2)(b) did not have any information § 87(2)(b) and § 87(2)(b) knew him only as, § 87(2)(b). The investigation was able to identify § 87(2)(b) via information obtained through officer interviews. After exhausting contact attempts, the investigation was unable to obtain a statement from § 87(2)(b).

Findings and Recommendations

Officer Identification

When § 87(2)(b) provided video 201610287_20161221_1707_DM.mp4 (Board Review), the video was discovered to contain the use of a discourteous word, which § 87(2)(b) did not allege. At approximately 14:40 to 14:50, a voice asks § 87(2)(b) “What’s your address?” followed by a pause before the same voice states, “Fuck” (**Allegation K**). § 87(2)(b) did not attribute this allegation to any particular officer and the investigation was unable to identify the subject officer. § 87(2)(g)

§ 87(2)(b) alleged that the same officer who frisked him and searched his vehicle also threatened § 87(2)(b) with arrest (**Allegation L**). Although the investigation determined that Sergeant Martinez performed the frisk and vehicle search, the investigation could not confirm the identification of the subject of this complaint. A video recording captures the alleged threat, but the subject officer is not depicted, and the investigation was unable to attribute the allegation to any of the officers by voice. All of the involved officers stated that they did not hear the alleged threat, and that they could not identify the voice. § 87(2)(g)

Allegation A—Abuse of Authority: Sergeant Robert Martinez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B—Abuse of Authority: Police Officer David Quattrocchi stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation C—Abuse of Authority: Police Officer William Schumacher stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Sgt. Martinez, PO Quattrocchi, and PO Schumacher stopped § 87(2)(b)'s vehicle. § 87(2)(g)

In his sworn statement, § 87(2)(b) testified that he drove south on Hendrix Street with § 87(2)(b) as his passenger, and turned left onto Livonia Avenue. § 87(2)(b) was not violating any traffic laws as he drove. His vehicle was stopped by Sgt. Martinez, PO Quattrocchi, and PO Schumacher at the intersection of Livonia Avenue and Barbey Street or Livonia Avenue and Schenck Avenue. Sgt. Martinez informed § 87(2)(b) that he had been speeding, and that he disobeyed multiple stop signs. § 87(2)(b) apologized in order to avoid an argument. Sgt. Martinez requested § 87(2)(b)'s driver's license, which § 87(2)(b) provided. During his CCRB interview, § 87(2)(b) stated that he had not been speeding or disobeying stop signs and noted that he follows all traffic laws in order to prevent being involved in traffic stops (Board Review 08).

Sgt. Martinez testified that he and his partners drove southbound on Livonia Avenue, they observed that § 87(2)(b)'s vehicle was traveling over the 25 mile per hour speed limit and that it disobeyed multiple stop signs. The officers signaled § 87(2)(b)'s vehicle to pull over, and it did so immediately at the intersection of Livonia Avenue and Schenck Avenue. Sgt. Martinez and his partners did not discuss their intentions inside their RMP, and they exited to approach § 87(2)(b)'s vehicle. Sgt. Martinez approached the driver's side window, and asked § 87(2)(b) for his driver's license; § 87(2)(b) provided his driver's license (Board Review 15).

PO Quattrocchi testified that he rode in the passenger seat of the RMP assigned to him and his partners as Sgt. Martinez operated it. PO Quattrocchi stated that he observed the same traffic violation which Sgt. Martinez testified to observing. PO Quattrocchi added that Sgt. Martinez decided to stop § 87(2)(b)'s vehicle (Board Review 16).

PO Schumacher stated that he observed the same traffic violation which the other officers testified to observing. PO Schumacher did not recall when or where he observed the traffic infractions, or which officer decided to stop the vehicle (Board Review 17).

§ 87(2)(g)

Allegation D—Abuse of Authority: Sergeant Robert Martinez frisked § 87(2)(b)

Allegation G—Abuse of Authority: Police Officer David Quattrocchi frisked § 87(2)(b)

It is undisputed that Sgt. Martinez frisked § 87(2)(b) and PO Quattrocchi frisked § 87(2)(b). It is also undisputed that § 87(2)(b) made a movement towards his center console when the vehicle was stopped.

In his sworn statement, § 87(2)(b) stated that after his vehicle was pulled over, he began recording with his cellular phone and placed the phone into the cup holder of his vehicle. § 87(2)(b) provided his information to Sgt. Martinez, and Sgt. Martinez asked him to step outside of the vehicle. Sgt. Martinez frisked § 87(2)(b)'s chest, back, sides, on his pockets, and down his legs. Sgt. Martinez did not discover anything on § 87(2)(b) or remove anything from his person, and § 87(2)(b) was ordered to stand at the back of his vehicle. § 87(2)(b) further alleged that § 87(2)(b) was ordered out of his vehicle, and ordered to the back of the vehicle. There, PO Quattrocchi frisked § 87(2)(b) around his pockets, waistbands, and sides of his legs (Board Review 08). § 87(2)(b)'s sworn statement was consistent with his phone statement (Board Review 18). § 87(2)(b) did not provide a statement that could detail his frisk.

Sgt. Martinez testified that as he and his partners approached § 87(2)(b)'s vehicle, he witnessed § 87(2)(b)'s shoulder and right arm move as he reached down toward the floor near the center console of the vehicle. Sgt. Martinez could not see exactly where § 87(2)(b) reached, but felt that the movement was suspicious made him concerned for his safety because he thought that § 87(2)(b) could be hiding or reaching for a weapon. As Sgt. Martinez continued to approach he shined his flashlight into § 87(2)(b)'s vehicle and observed a two inch by two inch plastic bag on the driver's side backseat, which he recognized as drug paraphernalia commonly used to package narcotics. At the time he observed the bag, he could not determine if it was empty or not. When Sgt. Martinez reached the driver's seat and saw § 87(2)(b) he recognized him from previous interactions and previous knowledge, as someone with a criminal past that included impersonating a police officer and violent crimes including robbery and burglary. Sgt. Martinez noted that he may have had a personal interaction with § 87(2)(b) two to four years ago, and noted that other officers at the 75th Precinct are aware of § 87(2)(b) and his history. § 87(2)(b)'s traffic violations also heightened Sgt. Martinez suspicion, because he thought that § 87(2)(b) could be leaving the scene of a crime. Sgt. Martinez asked § 87(2)(b) to exit his vehicle and frisked him because of § 87(2)(b)'s movement toward the floor near the center console, his criminal background, the drug paraphernalia, and his traffic violations all combined made Sgt. Martinez feel uncomfortable and unsafe. The frisk was intended to remove danger presented by the factors Sgt. Martinez observed. No weapons were recovered from § 87(2)(b). Sgt. Martinez recalled that after he frisked § 87(2)(b) an officer frisked § 87(2)(b). However, Sgt. Martinez could not recall which officer did so, or for what reason the officer did so (Board Review 15).

PO Quattrocchi testified that as he approached the vehicle he also observed § 87(2)(b)'s shoulders move downward and one or both arms move towards the center console of the vehicle. PO Quattrocchi felt uneasy because he thought that § 87(2)(b) reached for a weapon, passed to § 87(2)(b) or hidden. PO Quattrocchi did not observe § 87(2)(b) make any movements. Sgt. Martinez observed half inch by half inch bags on the back seat of the vehicle, and alerted PO Quattrocchi to its

presence. PO Quattrocchi identified the bags as commonly used to package crack cocaine; PO Quattrocchi could not see what was inside the bags because of the low level of light. PO Quattrocchi asked § 87(2)(b) to step out of his vehicle, and § 87(2)(b) did so without issue. Upon exiting the vehicle, PO Quattrocchi frisked § 87(2)(b) around his waistband and over his pockets. PO Quattrocchi stated that he frisked § 87(2)(b) because he thought that movement made earlier by § 87(2)(b) could mean that § 87(2)(b) passed § 87(2)(b) a weapon, and § 87(2)(b) could have had that weapon on his person after being asked out of the vehicle. PO Quattrocchi did not recall being ordered to frisk § 87(2)(b). PO Quattrocchi did not discover anything as a result of the frisk. PO Quattrocchi did not witness Sgt. Martinez frisk § 87(2)(b) however PO Quattrocchi was aware that Sgt. Martinez frisked § 87(2)(b) for his safety (Board Review 16).

PO Schumacher testified that he recalled that one or more of the occupants of the vehicle made what he called a furtive movement towards the center console. PO Schumacher did not recall if he observed the movement during the incident, but recalled discussing it with one or both of his partners. He recalled that the movement made him concerned that § 87(2)(b) retrieved or hid a weapon (Board Review 17).

In summary, Sgt. Martinez and PO Quattrocchi based the frisks of § 87(2)(b) on § 87(2)(b)'s movement towards his center console, the presence of drug paraphernalia, and knowledge of § 87(2)(b)'s criminal history.

People v. De Bour 40 N.Y. 2d 210, states that an officer can only perform a frisk if the officer reasonably suspects that he is in danger of physical injury by virtue of a stopped person being armed (Board Review 19).

People v. Feldman 114 A.D. 3d 603, states that the passenger of a vehicle that has been stopped, can be asked out a vehicle and frisked, if a totality of circumstances indicates that a passenger may be armed. The case describes that while there may be several circumstances which alone seem innocuous, the totality of certain circumstances together can justify a frisk (Board Review 20).

People v. Chann, 221 A.D. 2d 155, describes an incident in which an officer views defendant make a hand motion as if placing something behind a seat. The court held that an arm movement alone does not suggest that an individual is armed. The case also held that hand motions in absence of other indicia, invalidates frisks and fear of weapons possession is alleviated by removal of a civilian from a vehicle (Board Review 21).

§ 87(2)(g)
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§ 87(2)(g)
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Allegation E—Discourtesy: Sergeant Robert Martinez spoke discourteously to § 87(2)(b)
[REDACTED]

In his sworn statement, § 87(2)(b) testified that after he was frisked by Sgt. Martinez, he was ordered to go to the back of his vehicle. § 87(2)(b) asked why he was being sent to the back of his vehicle, to which Sgt. Martinez responded, “Stop fucking around” (Board Review 08).

§ 87(2)(b) provided video 201610287_20161221_1707_DM.mp4 (Board Review 01). The SnagIt portion of the video (Board Review 04) depicts Sgt. Martinez speaking with § 87(2)(b) and asking him out of his vehicle. Sgt. Martinez is clearly seen and although his face becomes obscured by § 87(2)(b)s back, it is clear that Sgt. Martinez is still speaking. At 02:14, Sgt. Martinez tells § 87(2)(b) “Stop fucking around.”

Sgt. Martinez testified that he did not recall telling § 87(2)(b) to, “Stop fucking around.” During his CCRB interview, Sgt. Martinez was presented with video 201610287_20161221_1707_DM.mp4. Sgt. Martinez confirmed that he is the officer captured speaking with § 87(2)(b) from 00:30 to 02:00. The video was played again from 02:14 to 02:18. Sgt. Martinez stated that while he could recognize his voice, he could not hear the phrase, “Stop fucking around,” because ambient noise in the recording made his words unintelligible (Board Review 15).

NYPD Patrol Guide Procedure 203-09 states that officers must be courteous and respectful (Board Review 22).

§ 87(2)(g)

Allegation F—Force: Sergeant Robert Martinez used physical force against § 87(2)(b)

In his sworn testimony, § 87(2)(b) stated that as Sgt. Martinez told him to “Stop fucking around,” § 87(2)(b) faced away from him and Sgt. Martinez placed one hand on § 87(2)(b)'s upper arm another on the back of his neck and slammed him against his vehicle, with his hand and face making contact with his vehicle (Board Review 08).

Sgt. Martinez testified that he did not slam or push § 87(2)(b) onto his vehicle after he was asked out of the vehicle (Board Review 15).

§ 87(2)(b) provided video 201610287_20161221_1707_DM.mp4 (Board Review 01). The SnagIt portion (Board Review 04) shows that after § 87(2)(b) is asked out of the vehicle, there is no indication that he is slammed onto his vehicle. In the video § 87(2)(b) faces away from Sgt. Martinez, and after Sergeant Martinez states, “Stop fucking around,” he instructs § 87(2)(b) to put his hands on the vehicle by stating, “Put your hands up on the thing alright?” At that time § 87(2)(b) appears to place his hands on the vehicle and he states, “You want my hands here or you want me to step back to the officer?” There is no slam or push seen on the video, and there is no sound heard as a result of the alleged slam. Further, there is no acknowledgement of force in the statements § 87(2)(b) or Sgt. Martinez make to each other.

§ 87(2)(g)

Allegation H—Abuse of Authority: Sergeant Robert Martinez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Sgt. Martinez searched § 87(2)(b)'s vehicle.

In § 87(2)(b)'s sworn statement, he alleged that Sgt. Martinez and PO Quattrocchi searched his vehicle after he and § 87(2)(b) were frisked, but that he could not see where the officers searched. [The allegation that PO Quattrocchi searched the vehicle is addressed below in **Allegation I.**] He also stated that officers searched his book bag that was inside his vehicle because he could hear it being opened in the video he recorded. § 87(2)(b) alleged that officers searched his glove box because documents that were originally inside his glove box had been taken out. In his follow up phone call, § 87(2)(b) clarified that he witnessed Sgt. Martinez reach into the vehicle from the driver's seat, open the center console, and search other places which he could not see (Board Review 08). Sgt. Martinez retrieved a square shaped plastic bag approximately one-inch by one-inch from § 87(2)(b)'s vehicle. There was nothing in the bag, and Sgt. Martinez placed it back into § 87(2)(b)'s vehicle. Nothing else was removed from the vehicle (Board Review 01). After § 87(2)(b)'s CCRB interview was finished, he went on the record again, and added that the plastic bag that Sgt. Martinez found was likely packaging for to the earpiece to a two way radio; he also noted that he had no knowledge of the bag's presence in his vehicle, and would have noticed if it was on his back seat (Board Review 23).

Sgt. Martinez stated that he searched § 87(2)(b)'s vehicle because the movement observed when he approached the vehicle made him think § 87(2)(b) could have retrieved or hidden a weapon. Sgt. Martinez also searched the vehicle to examine the plastic bag he had earlier identified as drug paraphernalia. Sgt. Martinez did not recall specific parts of the vehicle he searched except for the center console and around it and what he called the reachable areas; he noted that reachable areas were anywhere § 87(2)(b) could have reached. Sgt. Martinez retrieved the clear bag which he had observed earlier and discovered that there were no narcotics or narcotics residue inside. No weapons were found. At that time of the search, § 87(2)(b) had already been frisked, and was sent to stand at the back of his vehicle (Board Review 15).

PO Quattrocchi testified that he witnessed Sgt. Martinez search § 87(2)(b)'s vehicle; however he did not witness where inside the vehicle Sgt. Martinez searched. PO Quattrocchi stated that Sgt. Martinez conducted the vehicle search because of the movement § 87(2)(b) had made when the vehicle was stopped, which PO Quattrocchi thought could have been § 87(2)(b) concealing a weapon or passing a weapon to the passenger of the vehicle (Board Review 16). PO Schumacher testified that an officer whose identity he could not recall searched the center console of § 87(2)(b)'s vehicle because § 87(2)(b)'s movement towards it indicated that a weapon could be inside it. PO Schumacher confirmed that at some point during the incident one-inch by one-inch zip lock bags were observed inside the vehicle, the bags were inspected, and no contraband was found (Board Review 17).

People v. Chann, 221 A.D. 2d 155, describes a vehicle stop in which a vehicle was searched after the defendant made a hand motion as if to place an object in the back seat. The case also notes that the defendant was removed from the vehicle prior to the vehicle search. The courts determined that movement alone did not suggest that the defendant was armed. Because the civilian had been removed from the vehicle, this meant that he could not provide an immediate threat to the safety of the officers because the weapon was no longer immediately accessible (Board Review 21). Similarly, in People v. McCready, 121 A.D.2d 897, the courts held that a quick hand motion, absent other circumstances suggesting criminal activity, is not enough to establish probable cause to search a vehicle. (Board Review 26).

There are certain situations where reaching towards the center console of a vehicle, combined with other factors can provide enough information to establish probable cause. In People v. Omowale, 83 A.D. 3d 614, the Court used a totality of the circumstances analysis to determine that a weapon might be present in a vehicle and held that a limited search of specific areas of the vehicle was appropriate. (Board Review 25). There were several factors present in Omowale that distinguished it from Chann, McCready, and the case at hand. Specifically, the defendant in Omowale was observed placing something into center console of his vehicle, disobeyed the officer's commands to stop his vehicle, committed a traffic violation that the officer perceived was prompted by his presence, and then after finally pulling over made a second motion towards the center console. The combined factors in Omowale provided officers with probable cause to conduct a limited search of the vehicle. However, these additional factors do not exist in the case under investigation, thus, the standard established by Omowale is not applicable.

§ 87(2)(g)

§ 87(2)(g)

Allegation I—Abuse of Authority: Police Officer David Quattrocchi searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)

As noted above, in § 87(2)(b)'s sworn statement to the CCRB stated that PO Quattrocchi also searched his vehicle along with Sgt. Martinez. § 87(2)(b) witnessed Sgt. Martinez search his vehicle; however he did not witness PO Quattrocchi search the vehicle because he was ordered to look away from the vehicle. § 87(2)(b) alleged that PO Quattrocchi searched his vehicle because when he reviewed the video he recorded, he saw that it captured Sgt. Martinez inside and it captured PO Quattrocchi speaking to him (Board Review 08).

PO Quattrocchi testified that Sgt. Martinez conducted the search of the vehicle, and did not recall any other officer doing so. At the time of Sgt. Martinez' search, PO Quattrocchi was at the right side of the vehicle, towards the back (Board Review 16).

Sgt. Martinez testified that he conducted the vehicle search, and did not recall any other officer doing so. Sgt. Martinez did not state where PO Quattrocchi was while he searched the vehicle (Board Review 15).

PO Schumacher testified that an officer searched the center console of § 87(2)(b)'s vehicle, but could not recall whether one or more officers were involved (Board Review 17).

§ 87(2)(b) provided video 201610287_20161221_1707_DM.mp4 (Board Review 01). The relevant SnagIt portion (Board Review 05) shows that Sgt. Martinez entered § 87(2)(b)'s

vehicle and conducted a search. Sgt. Martinez is depicted speaking to another officer when he searches the vehicle. However, there is no indication in the video that PO Quattrocchi conducted a search of the vehicle himself.

§ 87(2)(g)

Allegation J—Abuse of Authority: Sergeant Robert Martinez interfered with § 87(2)(b)'s use of a recording device.

In his sworn statement, § 87(2)(b) stated that Sgt. Martinez deliberately moved his cellular phone in order to prevent it from recording the incident. § 87(2)(b) did not witness the interference himself because he was being ordered to turn his head away from viewing the search (Board Review 08).

Video 201610287_20161221_1707_DM.mp4, provided by § 87(2)(b) depicts the moment that Sgt. Martinez made contact with § 87(2)(b)'s recording device (Board Review 01). The SnagIt portion (Board Review 06) shows Sgt. Martinez enter § 87(2)(b)'s vehicle and begin his search. At 5:30 in the recording, the camera is moved so that the entire image is obscured. However, the video does not show what Sgt. Martinez did to move the camera.

Sgt. Martinez testified that he did not observe § 87(2)(b)'s cellular phone recording the incident or move the phone to interfere with the recording, and that he did not recall a cellular phone inside the vehicle. Sgt. Martinez was presented with video 201610287_20161221_1707_DM.mp4 during his CCRB interview. Sgt. Martinez was shown the video from 05:04 to 05:31. At 05:30 the camera moves and the camera's view is obscured. Sgt. Martinez stated that he did not move the camera deliberately. When asked how the camera moved, Sgt. Martinez stated that he did not know, and it may have been bumped (Board Review 15).

PO Quattrocchi and PO Schumacher testified that they were not aware of any action Sgt. Martinez took to prevent or interfere with § 87(2)(b)'s recording of the incident (Board Review 16 and Board Review 17).

NYPD Patrol Guide Procedure 208-03 states that civilians are free to observe police actions in public. The procedure also extends that freedom to video recording (Board Review 27).

§ 87(2)(g)

Allegation K—Abuse of Authority: An officer spoke discourteously to § 87(2)(b)

When § 87(2)(b) provided video 201610287_20161221_1707_DM.mp4 (Board Review), the video was discovered to contain the use of a discourteous word, which § 87(2)(b) did not allege.

At approximately 14:40 to 14:50, a voice asks § 87(2)(b) “What’s your address?” followed by a pause and then the same voice states, “Fuck.” § 87(2)(b) did not attribute this allegation to any particular officer. As noted, § 87(2)(b) did not provide a statement.

Sgt. Martinez, PO Quattrocchi, and PO Schumacher were presented with the video segment during their CCRB interviews. None of the officers could recognize the voice, or identify the person speaking (Board Review 15, Board Review 16, and Board Review 17).

§ 87(2)(g)

Allegation L—Abuse of Authority: An officer threatened to arrest § 87(2)(b)

In his sworn statement to the CCRB, § 87(2)(b) alleged that officers asked § 87(2)(b) for his information, which § 87(2)(b) did not wish to provide. In response, an officer stated, “In a minute you’re going to be in handcuffs if you do not tell me your name and date of birth.” After which, § 87(2)(b) provided his information (Board Review 08). § 87(2)(b) did not provide a detailed statement to the investigation.

§ 87(2)(b)’s video, 201610287_20161221_1707_DM.mp4, includes an unidentified voice which says, “Six? You just said ten something,” to which § 87(2)(b) replies, “I know but everything,” and the first voice states “In about two seconds I’m about to put you in handcuffs,” at approximately 16:55. The unidentified voice continues at 17:15, to accuse § 87(2)(b) of lying, instructs him to be honest, and asks questions regarding his name (Board Review 01). The face of the officer who made this statement is not depicted.

Sgt. Martinez testified that he did not tell § 87(2)(b) “In a minute you’re going to be in handcuffs if you don’t your name and date of birth.” Sgt. Martinez did not witness any other officer doing so. During his CCRB interview, Sgt. Martinez was presented with video 201610287_20161221_1707_DM.mp4. Sgt. Martinez was presented with the time of 17:15 to 17:40. Sgt. Martinez could not identify who was speaking at that time, but stated that it was not him (Board Review 15).

In his statement to the CCRB, PO Quattrocchi stated that § 87(2)(b) was not threatened with arrest during the incident. PO Quattrocchi was presented with video 201610287_20161221_1707_DM.mp4, and shown a clip covering 17:15 to 17:42 minutes in the recording. PO Quattrocchi stated that he did not recognize the voices, and was unsure if it was his voice or that of another officer (Board Review 16).

PO Schumacher testified that he did not recall any officer making the alleged threat of arrest. During his interview at the CCRB, PO Schumacher was presented with video 201610287_20161221_1707_DM.mp4. The video was played from 17:15 to 17:40. PO Schumacher stated that he did not identify the officer depicted as speaking to § 87(2)(b) (Board Review 17).

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date